

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9796 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PUNAMBHAI LALABHAI BAMANIYA

Versus

COMMISISONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 8th August, 1998, made by the Commissioner of Police, Vadodara City, under the powers

conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

Along with the order of detention, the petitioner has been served with the grounds of detention also. The grounds of detention reveal that three prohibition offences have been registered against the petitioner in the year 1998. Apart from the three offences registered against the petitioner, further information in respect of the anti social activities carried on by the petitioner has been gathered from three witnesses, whose identity has not be disclosed. On the basis of the above material, the petitioner is held to be a 'dangerous person' whose activities are prejudicial to the maintenance of public order.

Amongst other grounds, the learned advocate Ms. Kachchhavah has submitted that the representation dated 10th October, 1998, made to the Detaining Authority has not been considered. The petitioner's right to representation has been infringed upon and therefore, the continued detention of the petitioner is vitiated.

The petition has been contested by the respondent authorities. It is submitted that the petitioner made a representation to the Hon'ble Chief Minister on 10th October, 1998. The said representation was sent to the State Government for consideration and after considering, the same was rejected on 17th October 1998. A copy of the said representation was also submitted to the Detaining Authority and the Detaining Authority had forwarded the same to the State Government. Since the representation forwarded through the office of the Hon'ble Chief Minister was considered and rejected, the representation sent by the Detaining Authority was not considered.

This appears to be a gross non-application of mind. Upon perusal of the two representations, it appears that though they were made on the same day, in contents, they are substantially different. It was, therefore, imperative for the State Government to consider and decide both the representations. The concerned authority has not perused the contents of both the representations, and has failed to notice that their contents are substantially different. Be that as it may, since the State Government has admittedly failed to consider the representation made and forwarded to the Detaining Authority, the continued detention of the petitioner is vitiated.

The petition is, therefore, allowed, the impugned order of detention dated 8th August, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless required to be detained in some other case, be released forthwith.

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JOSHI*